

April 29, 2010

To: Mayor and Council, City of Rockville

From: Dion S. Trahan, Planning Commissioner

Re: Supplemental Dissenting Opinion on Commission vote on Proposed Text Amendment Recommendation, Text Amendment TXT2010-00227

I ardently recommend against the approval of TXT2010-00227, so dissent from the majority action of April 28, by the Planning Commission.

The proposed amendment is an extraordinary remedy that will only benefit a few special interests within the city: most notably, big developer interests.

The issue before the commission was whether the proposed text amendment, tolling the implementation period of any site plan, use permit, project plan or special exception that was valid as of June 30, 2010, would be extended through the tolling period to June 30, 2012, should be recommended to the Mayor and Council to be adopted into the zoning ordinance (ordinance). My analysis for my decision was a two part inquiry. First, what benefit does this amendment provide to the city? Secondly, is this a remedy that is needed by the citizens of Rockville at large?

A number of development projects in the past have been approved, but have not proceeded to the building permit stage. The major cause is the national economic downturn that began in 2007 and continues to this date.

The proposed text amendment would continue the tolling process for an additional 2 years within the City. The language, proposed as a new Section 25.07.16, will toll any project that was deemed valid as of June 30, 2010 until July 1, 2012. This would include any project that would have otherwise expired during the State tolling period. Projects that have been approved since the start of the State tolling period (January 1, 2008) would have whatever implementation period is left as of June 30, 2010 tolled to July 1, 2012, where their implementation period would recommence.

My first inquiry is what benefit does this amendment provide, if any, to the city?

I take issue with the breadth of the proposed language and how few will benefit. The remedy is too broad and will benefit only 5 projects. This is an extraordinary measure if taken. Under the proposed amendment, any approved project would be tolled even if they had not yet reached the end of their initial implementation period or exhausted their extensions. The staff report identified some support for giving extensions only to those projects that would have expired, except for the State tolling legislation. However, only 5 of the projects in queue would be affected here. Ten other approved projects would expire before June 30, 2012 due to having exhausted their available extensions. The fact that the ordinance already allows for extensions is evidence that the ordinance presumed that applicants may run into unforeseen difficulties in starting projects. If

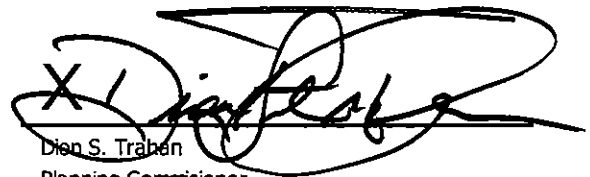
applicants could validate “good cause” before the commission, extensions could be granted. An applicant can already seek two extensions.

Supporters for the amendment made numerous arguments. The two arguments I found relevant were: 1) the economic hardship developers were under, and 2) the precarious position Rockville would be placed in contrasted to surrounding jurisdictions, which have decided to accept tolling as a, presumably, prudent measure.

In addressing economic hardship, the city has been challenged with the recession for several years now. The lack of financing schemes of developers, though sympathetic, is part of the risk of doing business in their trade. By seeking an application before the commission, one presumes that a developer intends on moving forward with its plan and construction and that finances are in order, though irrelevant for purposes of granting an application. The city has a vested interest in ensuring that permits granted are acted upon in a timely fashion. Indeed, many approved projects may bring tremendous needed infrastructure to the city. However, appealing to the economic hardships and needs of developers because a calculated risk of doing business in their trade, here the recession, has come to pass does not justify a remedy that, though applicable to all applicants, will truly only benefit a few (currently 5).

The second argument supporting the ordinance amendment is the precarious position Rockville will find itself in should it not subscribe to approval of tolling ordinances much like the surrounding jurisdictions, is indeed troubling. To speculate whether having a tolling ordinance on the books and suggest that because surrounding jurisdictions do that the lack of one will be a detriment to the city is premature at best and clairvoyant at worst. Ultimately, this is a political question that is best left in the providence of the Mayor and Council. Would it benefit a very select few special interests? Undeniably, yes. The decisive answer as to whether adopting the proposed tolling amendment would benefit the city: the answer is a resounding no.

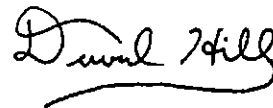
My second inquiry was whether this is a remedy that is needed by the citizens of Rockville at large, or a very limited select few? My understanding is that the 5 projects that would be affected by this proposed amendment are large, developer projects. One must weigh the city’s vision in the master plan which is brought to life by the zoning ordinance contrasted by the means of acquiring it. The crux of the issue is whether the remedy sought—the passage of the proposed tolling amendment—is a new tool in the public’s arsenal that is widely clamored for because of a clear deficiency in the ordinance that impedes public progress or whether the hushed whispers of a select powerful few seek special treatment to preserve investments and profit margins by buying time at the public’s expense until the economy improves.


 Dion S. Trahan
 Planning Commissioner

Concurring dissent:

From: David Hill, Planning Commissioner

The crux of my dissent is more narrow, involving the time period of the tolling proposed in TXT2010-00227. I find the duration of tolling is arbitrary and perhaps too long. Uncertainty from the unknowable of when economic conditions turn-around does not match the two year fixed period proposed. I prefer tolling for a single year in this proposed action, with the option of extending to a second year (or more). An effect of tolling is stifling timely public interest consideration with a prior judgment. I do not find as onerous, the need by development interests to reappear and justify good cause on approval extensions. Such is small public disclosure and interest check for genuine reasons, in balance with the benefits extended. I agree with Commissioner Trahan's detailed assertion that handling local regulation is a calculated cost of doing business for development and I contend a shift of associated risk as public burden should not occur for an arbitrary and long-ish duration. The Planning Commission has proven supportive of apparent economic hardship and I see no reason to doubt a continuation of that position while the premise for it remains valid. I am sympathetic to a procedural adjustment to the ordinance to allow further extensions in this extraordinary economic downturn. Yet not in agreement with the time structure of the majority recommendation. No one knows when the financing log jam will break. I recommend a more incremental time period structure for this action.



Planning Commissioner